

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DAVID JORDAN,

Plaintiff,

VS.

JOE B. BEASLEY & ASSOCIATES, LP,

Defendant.

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Case No. 3:23-cv-00496

Judge Crenshaw

Magistrate Judge Frensley

SUPPLEMENTAL AFFIDAVIT OF MORGAN NEWMAN

1. Morgan Newman supplements the previous affidavit submitted in the record (October 16, 2023, Doc. 25), by setting forth the following supplemental facts, all of which are presented to the Court under oath and are based upon personal knowledge and information, except where clarified.

2. Ms. Hutto's statement that the parking lot has been "repaved" is a false statement, without any factual basis. The parking lot has **never been "repaved" at any time** that I am aware of—certainly not in the past 20 years. But, the family business has been careful to maintain that parking lot, as well as other properties, which has preserved its longevity by applying **a thin liquid sealant** periodically. Not in relation to this lawsuit, but as a part of regular scheduling this past Summer, the Avis parking lot, and other properties owned by Beasley, were "sealed" with the thin liquid. The ADA markings were promptly replaced. A visit to the property, and a quick personal examination, would easily confirm that the asphalt parking lot was certainly not repaved with any additional asphalt, and that there has never been any slight change in the flatness of the asphalt parking lot. Ms. Hutto's (unsourced) statement to the Court

is false, and is without any factual merit. If she had checked, she would have found no city permit for an alteration such as “repaving.” It was nothing more than routine maintenance, intended to prolong the life of the existing asphalt through the application of the thin liquid substance. The supplemented pictures (depicted as the exhibits to Doc. 48) confirm the absolute “flatness” of the entire lot, and **particularly the public entrance into the building**, and have not changed at all since my first affidavit and pictures (Doc. 25). Mr. Jordon’s own **(post-hearing)** submitted pictures (Doc. 43) show the same! I cannot comprehend Ms. Hutto’s comments, and Jordon’s sworn statement that somehow “flat is not flat,” under their definition of ADA requirements. Mr. Jordon’s affidavit, claiming some **(even slight)** “incline” is false. A short visit, and a quick personal observation, proves that intentional sworn falsity by David Jordon. No rational person could truthfully swear to **(even a slight)** “incline.”

3. Ms. Hutto’s initial demand for attorney fees (despite my assurance of full compliance status) was for \$10,500.00, enhanced by (incorrect) legal advice and promises of “tax benefits,” refuted by my attorney. See attached. Then, that “fee” amount somehow briefly increased to \$12,000.00, and then “reduced” to what was characterized to me as a “typical pre-suit” demand of \$8,000.00. I am friends with Bill Taylor, of Taylor Investments, LLC, who received the same threatening letter that our business received. As will be shown in the Affidavit of Mr. Taylor, he also was first asked (in writing) for \$11,500.00, but that figure dropped to the \$8,000.00 figure. Ultimately, he told me that, due to his concern over attorney’s fees and lengthy litigation, he paid the Wampler firm \$5,000.00.

Witness my hand this the 6th day of February, 2024.


Morgan Newman

Sworn to and subscribed before me this the 6th day of February, 2024.


Notary Public



My Commission Expires: 12-18-2027

CERTIFICATE OF SERVICE

A true and exact copy of the foregoing has been sent via USPS and electronically to:

Rebecca J. Hutto, Esq., BPR #39252
Attorney for Plaintiff
WAMPLER, CARROLL, WILSON, & SANDERSON, P.C.
208 Adams Avenue
Memphis, TN 38103
Tel: 901-523-1844
rebecca@wcwslaw.com

on this ^{7th} day of February 2024.

/s/ Wm Kennerly (Ken) Burger

Wm Kennerly Burger
Burger Law Firm
12 Public Square North
Murfreesboro, TN 37130
(615) 893-8933
(615) 893-5333 facsimile
kenburger@comcast.net

On 08/21/2023 8:40 AM CDT Rebecca Hutto
<rebecca@wcwslaw.com> wrote:

Good morning Mr. Burger,

I am reaching out because I saw that you filed a Notice of Appearance in this matter. We have a deadline today of stipulating a mediator and mediation date. I recommend that we stipulate to Mr. Allen Blair to mediate. I am happy to reach out to him for dates, if you agree to use him. Additionally, I believe it would be in everyone's best interests to discuss resolving this matter in order to save the high cost that would be required by attending mediation. Below please find an initial settlement proposal.

Concerning repairs at the property, my client is requesting the following:

1. Addition of a van space and appropriate signage
2. Addition of a designated accessible space and appropriate signage
3. Addition of an access aisle
4. Repainting the parking lot
5. Leveling of the space outside the entrance door

My client is requesting these repairs be made within 120 days of the execution of a settlement agreement.

Further, my client is requesting \$10,500 total in attorney fees and costs associated with these cases. This figure encompasses tasks yet to done, but short of litigation.

Here is a summary:

1. attorney fees already accrued;
2. time spent in the negotiation of the settlement;
3. time spent in the drafting and execution of a settlement agreement; and
4. monitoring fees associated with ensuring your client

remediates the property and stays in compliance with the ADA.

These fees will increase if litigation continues.

Based on these terms, your client should have the opportunity to take advantage of the tax deduction (up to \$15,000) and tax credit (up to \$5,000) for access related expenditures made in 2023, per property.

These incentives are available each fiscal year that your client makes disability related expenditures. I look forward to hearing your client's thoughts.

Sincerely,

Rebecca Hutto

Attorney at Law

Wampler, Carroll, Wilson & Sanderson, PLLC

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